IN THE

Supreme Court of the United States

October Term, 1949

No. 513

WILLIAM A. LYON, Superintendent of Banks of the State of New York, as Liquidator of the business and property of Yokohama Specie Bank, Ltd., in the State of New York,

Petitioner,

against

BANQUE MELLIE IRAN.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

BANQUE MELLIE IRAN'S REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS.

ALLEN T. KLOTS,
Attorney for Banque Mellie Iran,
40 Wall Street,
New York 5, New York.

Of Counsel:

PETER H. KAMINER,
JAMES S. ROSENMAN.

INDEX

TABLE OF CASES AND OTHER AUTHORITIES

Cases

Statutes

IN THE

Supreme Court of the United States

October Term, 1949

No. 513

WILLIAM A. LYON, Superintendent of Banks of the State of New York, as Liquidator of the business and property of Yokohama Specie Bank, Ltd., in the State of New York,

Petitioner,

against

BANQUE MELLIE IRAN.

BANQUE MELLIE IRAN'S REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS.

POINT I.

The Superintendent's interest in this case is now purely academic.

The persistence of the Superintendent of Banks in failing to pay this claim and continuing to prosecute this appeal is quite incomprehensible to us. The only party that can possibly have any interest in defeating Banque Mellie's claim is the Department of Justice of the United States, Office of Alien Property. That party has now done everything in its power to remove the only impediment to the payment of the claim that could remain for consideration by this Court after the Court of Appeals' decision.

The Superintendent concedes that there are ample assets to pay all claims that have not already been paid, with interest, including Banque Mellie's claim.* No creditor, therefore, whose interest it is his duty to protect will in any way be prejudiced or affected by the payment of the claim. The excess of the assets in the Superintendent's hands after the payment of claims has all been vested by the Office of Alien Property and it alone will be entitled to the funds required to pay this claim if payment is denied. This Office has not only indicated its consent and approval to the payment of the claim by the issuance of a license in the broadest possible terms, but it also comes into Court by its counsel, the Solicitor General, and urges that either the writ of certiorari herein be dismissed or that the judgment of the Court of Appeals in favor of the claimant be affirmed.

The Superintendent admits that he has no real interest in the outcome, but says that as a trustee he must defend the property in his hands (Supt. Br., pp. 13-14). Defend it from whom? From the only parties who have any interest in it? Defend it on behalf of what beneficiaries? On behalf of the only beneficiaries who admittedly have any interest and who are of full age, of complete legal competency, and who have completely acquiesced in the payment of the claim? Is it his position that he must come forth as a knight in shining armor to defend the Government of the United States from itself?

The Superintendent takes us to task for our assertion that the Office of Alien Property has acceded to the payment of this claim and wants it paid (Supt. Br., p. 14). If

---

*The time for filing or prosecuting in the courts any further claims against the Superintendent of Banks in this liquidation proceeding has long since expired by law (New York Banking Law, Sections 620, 625).

anything more than the license itself were needed to justify our assertion, how can a shadow of a doubt remain after reading the Government's brief? When the Government of the United States in its brief states that there is no longer any Federal impediment to the payment of the claim (p. 3), that the United States would not object to the dismissal of the writ of certiorari as moot; and that this Court should make final disposition of the case either by dismissing the writ of certiorari as moot or by affirmance; we suggest that the argument of the Superintendent that the Government has not acceded to the payment of this claim can hardly be taken seriously.

We assume that the Court will not pass on the question purely for the intellectual satisfaction of one of the parties to the litigation when there is no issue left between the real parties in interest.

POINT II.

The retroactive license removes the only impediment to Banque Mellie Iran's claim, and there is no question for the New York courts to decide.

The Superintendent's argument that the license was not effective to cure any defect that might have existed in Banque Mellie's claim runs something like this: He argues that under the New York law only claims in existence at the commencement of the liquidation proceeding on December 8, 1941 were provable, that Banque Mellie's claim, owing to the prohibitions of the Executive Order, was not then in existence, and that the license in question does not retroactively cure that defect.

In answer to this, it is first to be noted that the claim against The Yokohama Specie Bank, Ltd., the "foreign

banking corporation", the only debtor with which the New York statute by its terms is concerned (New York State Banking Law, Section 606-4a), was not only in existence but fully matured and conceded. It will be recalled that Banque Mellie's claim is for the refund of unused balances of moneys paid to the New York Agency of The Yokohama Specie Bank, Ltd. before the freeze to cover certain credits opened in Japan. The credits which the moneys were deposited to cover had all expired prior to December 8, 1941, the commencement of the liquidation proceeding, the obligation to repay the balances had become fixed and liquidated in amount, and the debtor, through the New York Agency, had fully acknowledged its obligation to make the refunds on December 2, 1941.

Even if Banque Mellie's right to a preference were to involve the conception of a claim against the New York Agency, regarded as a separate entity, arising out of the acts of the Agency after the freeze, these acts all took place before the commencement of the liquidation on December 8, 1941. The last transaction with the Agency was the notice by the Agency to the Irving Trust Company on December 2, 1941 that it had been instructed to repay these balances provided a license should be procured. The perfection and maturity of the claim in no way depended on any act of the parties subsequent to the commencement of the liquidation.

The only alleged impediment to the payment of this claim at that time or at any subsequent time arose solely because of the requirement of a Federal license. The Irving Trust Company, on behalf of Banque Mellie Iran, had already on November 27, 1941 applied for a Treasury license to authorize the refund of these moneys (R. 249). Neither this application nor any of the subsequent applications was ever denied. Action was delayed due to the institution of the liquidation proceedings in New York (R. 249, 287, 262).

A license has now been granted by the Federal authority, not only licensing the payment of the claim but all transactions which gave rise to the claim.

There is not here involved, as the Superintendent would have us believe, "the creation of a claim in plaintiff's favor nine years subsequent to the commencement of the liquidation". The claim was created, due and existing prior to the commencement of the liquidation—the only alleged impediment being the absence of a Federal license, which had already been applied for and which the Federal Government had the power to grant retroactively.

The authority which had imposed this impediment has now removed it. The Superintendent concedes that this authority has the right "to validate past transactions, nor do we question his intention to do so in the present case" (Supt. Br., p. 8). What more is there to be said? If there is any more to be said, it has been very effectively said in the brief of the Solicitor General in this case.

The Federal Government has complete authority over the field in which this impediment arose—namely, the control of foreign funds. *Propper* v. *Clark*, 337 U. S. 472; *Great Northern Railway Company* v. *Sutherland*, 273 U. S. 182. The right of the Federal Government to assert its power retroactively here cannot be questioned, *U. S.* v. *Pink*, 315 U. S. 203; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *In re Winn Shoe Co.*, 81 Fed. (2d) 713 (2nd Cir.). If it is the law of New York that claims must be valid at the commencement of the liquidation, this claim is such a claim because the Federal Government, which has the authority to remove the alleged impediment as of the dates when the transactions took place, has so removed it.

The Superintendent of Banks apparently concedes that all this would have been true if the license had included the

words "*ab initio*" (Supt. Br., p. 9). We submit that neither the law nor the English language imposes such tautological demands upon us.

The Superintendent's somewhat gratuitous suggestion that the Office of Alien Property ought not to have the power to license claims retroactively, if it requires any reply, has been more than adequately dealt with by the Solicitor General in his brief.

The Superintendent, while first suggesting that this case should be remanded to the State court and the effect of this license passed upon by the State court "in the first instance", subsequently withdraws his objection to this Court's undertaking to decide the question at the present time (Supt. Br., p. 7). He admits that much time and litigation would be saved thereby—a highly desirable objective considering that this case has been in the courts for nearly seven years.

It would seem obvious that the questions of whether this license is retroactive, the extent to which it is retroactive, and the power of the Federal authorities to make it retroactive are all Federal questions within the jurisdiction of this Court. There is no question of State law involved which requires any determination by the State courts.

Conclusion.

The motion to dismiss the writ should be granted.

Respectfully submitted,

ALLEN T. KLOTS,
Attorney for Banque Mellie Iran.

Of Counsel:

PETER H. KAMINER,
JAMES S. ROSENMAN.